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Attorney for Plaintiffs, DAVID J. LEE

UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

DAVID J. LEE, as individuals and, on  
behalf of others similarly situated,

Plaintiffs,

vs.

CAPITAL ONE BANK and CAPITAL  
ONE SERVICES, INC. Virginia  
corporations, and DOES 1, through 100,  
inclusive,

Defendants.

Case No.: C 07-4732 MJJ

PLAINTIFF'S MEMORANDUM OF  
POINTS & AUTHORITIES, FILED IN  
SUPPORT OF PLAINTIFF'S REQUEST  
FOR JUDICIAL NOTICE

[REQUEST FOR JUDICIAL NOTICE  
AND PROPOSED ORDER, FILED  
CONCURRENTLY]

DATE: March 3, 2008  
TIME: 2:00 p.m.  
CTRM: 15

18<sup>th</sup> Floor  
450 Golden Gate Ave.  
San Francisco, Ca. 94102

**MEMORANDUM OF POINTS & AUTHORITIES**

This Court may, pursuant to Fed.R.Ev. 201, take judicial notice of the files and records of cases filed in the United States District Courts. Reyn's Pasta Bella, LLC v. Visa USA, Inc., 442 F.3d 741, 746 (9<sup>th</sup> Cir. 2006). The documents for which judicial notice are sought are of two varieties. The first, are a series of documents filed in Lee v. American Express Travel Related Services Company, Inc., docket number C-07-4765 (CRB) (N.D. Cal. September 9, 2007). The second category of document consists of a webpage from the Defendants' official website: <http://www.capitalone.com/>.

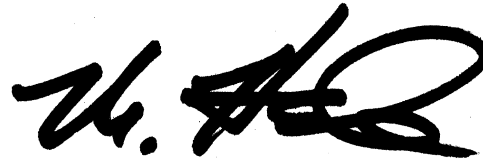
Judicial notice of these documents is required in order for this Court to be fully apprised of the Plaintiffs' legal arguments in Lee v. American Express Travel Related Services Company, Inc., and the rationale for Judge Breyer's decision in that case, as well of the Court to take notice of the Plaintiffs' pending appeal in that case. As for the Defendants' webpage, judicial notice of that document is sought to apprise the Court of certain admissions made by the Defendants that their credit cards provide a "convenient service" illustrated by the California Court of Appeals in Hitz v. First Interstate Bank, 38 Cal.App.4<sup>th</sup> 274, 286, 44 Cal.Rptr.2d 890 (1995).

Based upon the forgoing facts and authority the Court is respectfully requested to take Judicial Notice of (1) the Complaint filed in Lee v. American Express Travel Related Services Company, Inc., docket number C-07-4765 (CRB) (N.D. Cal. Sept. 9, 2007); (2) the hearing transcript relative to the Defendants' motion to dismiss in Lee v. American Express Travel Related Services Company, Inc. argued before Judge Charles H. Breyer on Friday, November 30<sup>th</sup> 2007; (3) Plaintiff's Notice of Appeal filed in Lee v. American Express Travel Related Services Company, Inc., docket number C-07-4765 (CRB) (N.D. Cal. Sept. 9, 2007); (4) a copy

1 of a screen from Capital One's official web site entitled "Capital One ® Platinum Credit Cards  
2 'disclosure'" that can be found at the following URL:  
3 [http://www.capitalone.com/creditcards/products/10279/14/index.php?linkid=WWW\\_Z\\_Z\\_tg04a](http://www.capitalone.com/creditcards/products/10279/14/index.php?linkid=WWW_Z_Z_tg04a)  
4 [http://www.capitalone.com/creditcards/products/10279/14/index.php?linkid=WWW\\_Z\\_Z\\_tg04a](http://www.capitalone.com/creditcards/products/10279/14/index.php?linkid=WWW_Z_Z_tg04a)  
5 [\\_CCOMP\\_C1\\_01\\_T\\_CP27914](http://www.capitalone.com/creditcards/products/10279/14/index.php?linkid=WWW_Z_Z_tg04a); and (5) a copy of a screen from Capital One's official web site  
6 entitled "Platinum MasterCard ® Cardholder Benefits" that can be found at the following  
7 URL:[http://www.capitalone.com/creditcards/pdfs/MC\\_Platinum.pdf?linkid=WWW\\_Z\\_Z\\_v1\\_](http://www.capitalone.com/creditcards/pdfs/MC_Platinum.pdf?linkid=WWW_Z_Z_v1_CP_27914_C1_03_T_BGUIMC)  
8 [CP 27914\\_C1\\_03\\_T\\_BGUIMC](http://www.capitalone.com/creditcards/pdfs/MC_Platinum.pdf?linkid=WWW_Z_Z_v1_CP_27914_C1_03_T_BGUIMC).  
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10 Dated: January 25, 2008

Respectfully submitted,

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14 By: \_\_\_\_\_  
15 Matthew S. Hale, Esq.  
16 Counsel for Plaintiffs,  
17 David J. Lee  
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